United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

JANUARY TERM, 1905.

No. 1505.

No. 9, SPECIAL CALENDAR.

BENJAMIN W. GUY, APPELLANT,

vs.

THE DISTRICT OF COLUMBIA.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

INDEX.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 12, 1905.

In the Court of Appeals of the District of Columbia.

BENJAMIN W. GUY, Appellant,
vs.
THE DISTRICT OF COLUMBIA. } No. 1505.

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a Supreme Court of the District of Columbia.

BENJAMIN W. GUY, Petitioner,
vs.
THE DISTRICT OF COLUMBIA, Respondent. } No. 47085. At Law.

UNITED STATES OF AMERICA,
District of Columbia, } *ss:*

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above entitled cause, to wit:—

1 *Petition for Writ of Certiorari.*

Filed July 19, 1904.

In the Supreme Court of the District of Columbia.

BENJAMIN W. GUY, Petitioner,
vs.
THE DISTRICT OF COLUMBIA, Respondent. } At Law. No. 47085.

The petitioner states as follows:—

1. That he is the owner in fee simple of lot numbered twenty-three (23) in square numbered eight hundred and sixty-nine (869) situate at the corner of Seventh street and East Capitol street in the city of Washington in the District of Columbia.

2. That there is borne on the tax records of the respondent and in its custody an entry of a tax sale of said lot made on the 23d. day of February, 1888 for $1734.95 to one John G. Slater the said sum consisting of the following items as shown by said record: Lien certificate No. 1637 for special assessment in the name of

Emanual Mason amounting with interest to $926.56: lien certificate No. 12116 for special assessment in same name amounting with interest to $365.61: general taxes for years 1878 to 1884 inclusive assessed in name of William Deacon amounting to $389.59: general taxes for years 1885 and 1886 assessed in name of L. M. Saunders amounting to $53.25.

That no deed has ever been executed for said lot under
2 said tax sale, but a certificate of said sale was issued to said Slater which is now outstanding and uncancelled and the said record constitutes a cloud or incumbrance on petitioner's lot.

3. That the special assessments for which said lien certificate No. 1637 was issued purport to be for an improvement of East Capitol street from First to Eleventh street; and those for which said lien certificate No. 12,116 was issued purport to be for an improvement of Seventh street, east, from North Carolina avenue to Boundary street.

4. That the said alleged assessments were made and the said lien certificates issued in violation of the act of the Legislative Assembly of said District relating to special assessments, approved August 10, 1871, and of the act amendatory thereof, approved May 29, 1873, and are therefore null and void; and your petitioner on information and belief says that the pretended improvements for which said alleged special assessments were made were not embraced in one contract and that said improvements were made at different times by different contractors and under contracts differing in dates of execution and final measurements; your petitioner on information and belief further alleges that the statement of the cost of said improvements on East Capitol street and on Seventh street, east, were not officially signed, authenticated and filed according to statutory requirement; your petitioner further alleges that no notice of the so-called improvement or assessments was given to the owner thereof; that there was no return or proof
3 of service as provided by said acts; and your petitioner further avers that said assessments and certificates are illegal and void for other material defects all of which appear on the records in the possession of the respondent.

Wherefore, your petitioner prays:

1. That a writ of certiorari issue from this court directing the District of Columbia to certify immediately to this court copies of each and every part of the records in its custody relating in any manner to charges against lot 23 in square 869 in Washington city for which lien certificates Nos. 1637 and 12,116 were issued and for which a tax sale was made February 23, 1888; said charges purporting to be for improvements on East Capitol street and Seventh street, east, made by the Board of Public Works of said District under the acts of the Legislative Assembly approved August 10, 1871, and May 29, 1873, said copies to include all contracts, final engineer measurements, statements of cost, assessments, notices to proprietors

of said lot, returns of services and proof of manner of the service, and the record of the tax sale.

2. And that upon coming in of said returns the said tax sale may be quashed and annulled by the judgment of this court and the respondent directed to cancel the same on its records.

BENJAMIN W. GUY.

HALLAM & HALLAM,
Attorneys for Petitioner.

4 DISTRICT OF COLUMBIA, *To wit:*

I, Benjamin W. Guy, do solemly swear that I have read the foregoing petition by me subscribed and know the contents thereof, that the facts therein stated of my own personal knowledge are true, and those facts therein stated upon information and belief I believe to be true.

BENJAMIN W. GUY.

Subscribed and sworn to before me this 18th day of July, A. D. 1904.

[NOTARIAL SEAL.] THOMAS W. SORAN,
Notary Public.

(Endorsed:) Let the writ issue. Wright, justice.

5 *Motion to Quash, etc.*

Filed Sept. 9, 1904.

In the Supreme Court of the District of Columbia.

BENJAMIN F. GUY
vs.
THE DISTRICT OF COLUMBIA. } At Law. No. 47085.

Now comes the defendant, by its Commissioners and moves this court to quash and to set aside the writ of certiorari herein for the following reasons:

1. Because the same was issued *ex parte*.
2. Because the allowance of said writ in this case would be inequitable and unjust.
3. Because the grounds for quashing the taxes in the petition mentioned are mere irregularities, and the right of the defendant to levy and assess the taxes therein set forth is not questioned.
4. That the allowance of said writ will cause serious detriment to the public interest and embarrassment to defendant in the collection of its taxes.

5. Because the matters and things set forth and complained of in said petition are stale and ancient, and barred by the statute of limitations; and the parties interested in the said property have delayed unreasonably in making their application.

6 6. Because at the time of the said tax sale the purchaser thereat was one of the owners in fee of the said property, and the title or lien so acquired at the said sale became and was merged in the fee simple.

7. And for other reasons appearing upon the face of said petition and also set forth in the affidavit hereto annexed and made part hereof.

A. B. DUVALL,
F. H. STEPHENS,
Attorneys for Defendant.

In the Supreme Court of the District of Columbia.

BENJAMIN F. GUY, Petitioner, *vs.* THE DISTRICT OF COLUMBIA, Respondent.	Certiorari. Law. No. 47085.

DISTRICT OF COLUMBIA, *ss*:

Henry L. West, being duly sworn, says he is one of the Commissioners of the District of Columbia; that, as such Commissioner, he has official knowledge of the assessment and taxation of land in the city of Washington, District of Columbia, and of the records made of such assessments and taxation; that upon his official

7 knowledge he says that the real estate described in the above-mentioned action, to wit, lot twenty-three (23), in square eight hundred and sixty-nine (869), is situated at the corner of East Capitol and Seventh streets in said city; that in 1872 East Capitol street was improved from First street to Eleventh street by the laying of watermains, curbs, grading, &c., and a proportionate part of said cost was charged to the said premises; that in 1877, Seventh street east from North Carolina avenue to Boundary street was also improved in a similar manner and a proportionate part of that cost charged to the said premises; that the said land was at the dates aforesaid assessed in the name of Emanuel Mason, who had a ninety-nine year lease from Robert Prout, the owner in fee simple; that the said assessments were made under the authority of an act of the Legislative Assembly passed August 10, 1871, and an act amendatory thereof passed May 29, 1873, and were legally and properly so made, according to affiant's information and belief; and said assessments were ratified and confirmed by the act of Congress approved June 19, 1878; that upon failure to pay said assessments tax lien certificates, in accordance with law, were issued against the

said premises, and in order to satisfy said certificates and at the instance of the holder thereof, the said property was sold to John G. Slater for seventeen hundred and thirty-four dollars and ninety-five cents ($1734.95), on February 23, 1888; that no application has ever been made for a deed based upon the said sale, or upon the certificates so issued; that on December 11, 1886, the residue of the said ninety-nine year lease was con-
8 veyed to the said John G. Slater and Charles Christiani, and on July 2d, 1888, the said property was conveyed to the said Slater and Christiani in fee, as tenants in common, by Mary C. Prout, grantee of the heirs of Robert Prout; that the purchase of the said property at the said tax sale was made to protect the interest and estate of the said Slater and Christiani; that the lien of the said sale, by the said last mentioned deed, became merged in the fee and extinguished; that in their answer to the bill of Samuel Bieber for specific performance (equity cause No. 11655) the said Christiani and Slater say they paid upwards of $2,000 in arrears of taxes in perfecting the title to the said property, which expenditure, as affiant is informed and believes, included the special assessments and taxes set forth in the petition filed in this cause; that since the said mentioned dates the said property has changed hands several times and the successive grantees knew of the lien of the said sale, if any such lien existed, and that no injury has been done to the plaintiff herein by reason of said assessments or sales; that the said Benjamin W. Guy, petitioner, became the owner of the said property on June 28, 1904, by deed from Antionette de S. Christiani, widow and devisee of Charles Christiani, to whom the said Slater had conveyed his interest June 29, 1894; that at the time of the conveyance to the said Guy the conveyance and proceedings set forth in this affidavit were, as they are now, matters of record, and affiant says, upon informa-
tion and belief, that the said petitioner had not only con-
9 structive, but actual, knowledge of the same, and that petitioner has not been in any wise injured by reason of the assessments and taxes of which he complains, but that the property, which he purchased with full knowledge of said assessments and taxes, was and has been materially benefitted and enhanced in value by the work and improvements for which said assessments and taxes were levied and assessed.

Affiant further says upon his official knowledge that the taxes sought to be cancelled by this proceeding are in part assessments arising as heretofore stated and in part general taxes; that the collection of the said assessments and taxes are absolutely essential to the ability of the District of Columbia to discharge its manifold municipal functions with punctuality, and that it is of the utmost importance, both to the municipal government of the District of Columbia and to the Federal Government, under the peculiar system that prevails in the District of Columbia, that the mode adopted for the speedy collection of taxes and assessments should be delayed or interrupted as little as possible by the interference of the courts;

that no question is made in said petition, nor can any be made, as affiant verily believes, as to the right of the authorities to levy the taxes and assessments mentioned, and the grounds alleged for quashing the same are purely technical and consist of alleged irregularities, none of which go to the validity of the taxes sought to be quashed or to the right of the authorities to levy the same; that the matters and things alleged in the said petition occurred many years ago and the parties interested in the same have not used due diligence in prosecuting their said action; that the District offices have been moved several times since the said work was done, as recited, and that many valuable records pertaining to this case have been lost or destroyed and that the said District has lost much valuable evidence thereby.

Affiant further says that said Commissioners are advised that the writ of certiorari issued in this cause was issued upon an *ex parte* application, said Commissioners having no opportunity to be heard in reference thereto; that they are further advised that the said writ is not a writ of right, but rests in the discretion of the court; that inasmuch as the allowance of the writ in this cause, if said Commissioners are required to answer the same, and the allowance of similar writs in similar cases will produce delay and embarrassment in matters of public concern, they pray that the writ issued herein may be quashed and the prayers of the petition denied.

HENRY L. WEST.

Subscribed and sworn to before me this 8th day of September, A. D. 1904.

LOUIS C. WILSON,
Notary Public, D. C.

[NOTARIAL SEAL.]

Supreme Court of the District of Columbia.

MONDAY, *November* 14, 1904.

Session resumed pursuant to adjournment, Mr. Justice Barnard presiding.

* * * * * * *

BENJAMIN W. GUY, Petitioner,
v.
THE DISTRICT OF COLUMBIA, Resp't. } At Law. No. 47085.

Upon hearing the motion of the respondent to quash the writ of certiorari issued herein, it is considered that the writ of certiorari issued as aforesaid be, and the same hereby is, quashed and for nothing held; and that the petition herein be, and hereby is, dismissed at the costs of the petitioner.

that no question is made in said petition, nor can any be made, as affiant verily believes, as to the right of the authorities to levy the taxes and assessments mentioned, and the grounds alleged for quashing the same are purely technical and consist of alleged irregularities, none of which go to the validity of the taxes sought to be quashed or to the right of the authorities to levy the same; that the matters and things alleged in the said petition occurred many years ago and the parties interested in the same have not used due diligence in prosecuting their said action; that the District offices have been moved several times since the said work was done, as recited, and that many valuable records pertaining to this case have been lost or destroyed and that the said District has lost much valuable evidence thereby.

Affiant further says that said Commissioners are advised that the writ of certiorari issued in this cause was issued upon an *ex parte* application, said Commissioners having no opportunity to be heard in reference thereto; that they are further advised that the said writ is not a writ of right, but rests in the discretion of the court; that inasmuch as the allowance of the writ in this cause, if said Commissioners are required to answer the same, and the allowance of similar writs in similar cases will produce delay and embarrassment in matters of public concern, they pray that the writ issued herein may be quashed and the prayers of the petition denied.

HENRY L. WEST.

Subscribed and sworn to before me this 8th day of September, A. D. 1904.

LOUIS C. WILSON,
Notary Public, D. C.

[NOTARIAL SEAL.]

Supreme Court of the District of Columbia.

MONDAY, *November* 14, 1904.

Session resumed pursuant to adjournment, Mr. Justice Barnard presiding.

* * * * * * *

BENJAMIN W. GUY, Petitioner,
v.
THE DISTRICT OF COLUMBIA, Resp't. } At Law. No. 47085.

Upon hearing the motion of the respondent to quash the writ of certiorari issued herein, it is considered that the writ of certiorari issued as aforesaid be, and the same hereby is, quashed and for nothing held; and that the petition herein be, and hereby is, dismissed at the costs of the petitioner.

Supreme Court of the District of Columbia.

WEDNESDAY, *December* 7, 1904.

Session resumed pursuant to adjournment, Mr. Justice Barnard presiding.

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BENJAMIN W. GUY, Plaintiff,
v.
DISTRICT OF COLUMBIA, Defendant. } At Law. No. 47085.

12 Now comes here the plaintiff, by his attorney, O. B. Hallam, and notes an appeal to the Court of Appeals from the judgment rendered herein November 14, 1904; and the penalty of the bond on said appeal is fixed at $100.00.

Memorandum.

December 8, 1904.—Appeal bond filed.

13 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, } *ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 12, inclusive, to be a true and correct transcript of the record, as per rule 5 of the Court of Appeals of the District of Columbia, in cause No. 47,085, at law, wherein Benjamin W. Guy is petitioner, and The District of Columbia is respondent, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 28th day of December, A. D. 1904.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1505. Benjamin W. Guy, appellant, *vs.* The District of Columbia. Court of Appeals, District of Columbia. Filed Jan. 5, 1905. Henry W. Hodges, clerk.

Court of Appeals, District of Columbia.

JANUARY TERM, 1905.

No. 1505.

BENJAMIN W. GUY, APPELLANT,

v.

THE DISTRICT OF COLUMBIA.

BRIEF FOR THE APPELLEE.

ANDREW B. DUVALL,
FRANCIS H. STEPHENS,
Attorneys for the Appellee.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 14712

Court of Appeals, District of Columbia.

JANUARY TERM, 1905.

No. 1505.

BENJAMIN W. GUY, APPELLANT,

v.

THE DISTRICT OF COLUMBIA.

BRIEF FOR THE APPELLEE.

STATEMENT OF THE CASE.

The case comes into this court upon an appeal from the judgment of the court below sustaining a motion to quash a writ of certiorari.

The petition for the writ sets out that the petitioner is the owner of lot 23, square 869, at the corner of East Capitol and Seventh streets; that there appears on the records of the District of Columbia the entry of a tax sale of this property to John G. Slater, February 23, 1888, for the sum of $1,734.95, made up of two lien certificates against Emanuel Mason for $926.56 and $365.61 respectively, general taxes for the years

1878 to 1884, inclusive, assessed against William Deacon, amounting to $389.59, and taxes for the years 1885 and 1886, assessed against L. M. Saunders, amounting to $53.25; that no deed was issued on this sale, but that the certificate is now outstanding and constitutes a cloud on the title. The petition further alleges that the special assessments for which the certificates issued were for the improvement of East Capitol street from First to Eleventh and of Seventh from North Carolina avenue to Boundary.

It is alleged also that the assessments were made under authority of the acts of the Legislative Assembly of August 10, 1871, and an act amending the same of May 29, 1873, and in violation of the said acts, and were therefore void, and were void because of further irregularities mentioned in the petition.

A motion was made to quash the writ of certiorari because the defects set forth were merely irregularities, the right to assess not being questioned; because the allowance of the writ would cause serious detriment to the public interest and embarrass the defendant in the collection of taxes; because the matters complained of are stale and ancient and barred by the statute of limitations; because at the time of the said sale the purchaser was one of the owners of the said property and the lien so acquired became merged in the fee; and for other reasons appearing on the face of the petition.

In support of this motion to quash was filed an affidavit of one of the District Commissioners setting out the improvement of East Capitol street in 1872 and of Seventh street in 1877; that at this time the property stood in the name of Emanuel Mason, who had a ninety-nine-year lease; that the said assessments were ratified by the act of Congress of

June 7, 1878; that the sale was made to Slater for $1,734.95 February 23, 1888; that no application has ever been made for a deed; that on December 11, 1886, the residue of the ninety-nine-year lease was conveyed to Slater and Charles Christiani, and on July 2, 1888, the heirs of Robert Prout, the owner of the reversion, conveyed the same to Slater and Christiani as tenants in common; that Slater bought at the said tax sale to protect the title of himself and Christiani as owners, and the said lien then became merged in the fee; that in their answer to the bill of Samuel Bieber for specific performance Slater and Christiani say they have spent upwards of $2,000 for arrears of taxes in perfecting the title to the property, which expense, affiant alleges, includes the matter in dispute; that the property has changed hands several times, and that the successive grantees had notice of the said lien and were not injured thereby; that the taxes attacked are in part general taxes, the prompt collection of which is essential to municipal affairs; that the matters complained are mostly technical and do not go to the right of the authorities to assess the taxes, and that the District offices, since the performance of the said work, have been moved many times and many valuable records pertaining to this case have been lost or destroyed.

ARGUMENT.

I. It will be seen that the matters complained of in the petition, Record, p. 2, paragraph 4, are, as stated in the affidavit, for the most part mere irregularities and objections purely technical in character, and do not go to the right of the authorities to make the assessments complained of. There

is no allegation that the work was not well done, or that the property assessed should not have borne its proportionate share of the expense, or that the work did not benefit the property. There is nothing, in short, to commend the case to the attention of a court of justice save only the statement that no notice of the improvements made was given to the owner of the premises. Whether or not any of the irregularities complained of actually existed, or whether or not notice was given to the owner, we have no means at the present time of determining. The parties interested in the property are believed to be dead, and the records of the District of Columbia pertaining to this case have, for the most part, been lost or destroyed.

The improvements for which the assessments were made were for grading, and laying water mains and curbs. The first was made in 1872, and the second in 1877. Thirty-two years and twenty-seven years have elapsed since the work was done. It is a very simple matter for the appellant to allege, on information and belief, that no notice was given the owner of the proposed improvements. If the issue of the case were to depend upon the records of the District after such a lapse of time, it is anticipated that recovery would follow almost as a matter of course. On the other hand, if there be any presumptions of law, and we apprehend there are, as to the correctness of the proceedings arising from the lapse of such a long period of time, if there be any presumptions arising in favor of the District from the long acquiescence of the parties interested, the appellant has no standing in court. Moreover, the residue of the ninety-nine-year lease was purchased by Slater in 1886; in 1888,

February 23, the property was sold to Slater to satisfy the lien certificates, and on July 2, in the same year, Slater and Christiani purchased the reversion. The tax sale thus made has stood unquestioned for a period of eighteen years, and neither Slater and his co-tenant nor any of their grantees, until the present, have raised any dispute as to the validity or legal efficacy thereof.

It is submitted that the laches shown on the part of those interested in the property has been of an exceptionally gross character and deprives them of any standing in a court of justice, nor does the fact that the present owner has been such for only a short time place him in any better position. The tax sale was a matter of record and undoubtedly came to the notice of all those who dealt with the property, and most certainly they were chargeable with such notice. The present petitioner has no better right in the premises than had Slater and Christiani.

Mattingly *v.* D. C., 97 U. S., 687.
Padgett *v.* D. C., 17 App. D. C., 255.

II. When the residue of the ninety-nine-year lease and the reversion came into the hands of Slater and Christiani, as tenants in common, the lien held by Slater, and which was purchased by him for the purpose of clearing the title, became merged in the fee and ceased to exist from that time and is no longer outstanding. To say that a person may purchase a mortgage against a piece of property and then purchase the fee in the property and still claim his mortgage as against his grantee would be to state a proposition which no court would recognize as the law. The cases are analogous: Slater purchased to protect the title of himself

and co-tenant, thereby recognizing the validity of the proceedings to sell. Could he then have instituted this action to set aside the sale as void? If not, is his grantee in any better position?

III. The question of costs in this case is unimportant and is raised here for the first time. There was no reference to it in the court below and no complaint thereof. It is hardly fair to seek to reverse a trial court upon an unimportant matter upon which it was not requested to rule.

The judgment below was correct and should be affirmed.

ANDREW B. DUVALL,
FRANCIS H. STEPHENS,
Attorneys for the Appellee.